HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved fro reporting.)

(Chapter VII Rule 32 (2)(b)

Description of the case.

WPMB No. 256/02

Arya Samaj, Ram Nagar

Vs

State of Uttaranchal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision: 18.04.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO: 256 OF 2002 (M/B)

1- Arya Samaj, Ramnagar, District Nainital.
2- Arya Samaj, through its Secretary, Sri Dinesh Kumar Goel, Ramnagar, District Nainital.

--------Petitioners

Versus

1- State of Uttaranchal through District Magistrate, Nainital.
2- Addl. District Magistrate (Nazool), Nainital
3- Nagar Palika Parishad through its Executive Officer, Ramnagar, District Nainital.
4- Trilok Chandra, S/o Sri Harak Dev, R/o Ranikhet Road, Ramnagar, District Nainital.
5- Additional Commissioner, Kumaun Mandal, Nainital.

--------Respondents

AND

WRIT PETITION NO: 257 OF 2002 (M/B)

1- Arya Samaj, Ramnagar, District Nainital.
2- Arya Samaj, through its Secretary, Sri Dinesh Kumar Goel, Ramnagar, District Nainital.

--------Petitioners

Versus

1- State of Uttaranchal through District Magistrate, Nainital.

2- Addl. District Magistrate (Nazool), Nainital
3- Nagar Palika Parishad through its Executive Officer, Ramnagar, District Nainital.
4- Parmanad, S/o Sri Poornanad, R/o Ranikhet Road, Ramnagar, District Nainital.
5- Additional Commissioner, Kumaun Mandal, Nainital.

--------Respondents

AND

WRIT PETITION NO: 258 OF 2002 (M/B)

1- Arya Samaj, Ramnagar, District Nainital.

2- Arya Samaj, through its Secretary, Sri Dinesh Kumar Goel, Ramnagar, District Nainital.

--------Petitioners

Versus

1- State of Uttaranchal through District Magistrate, Nainital.
2- Addl. District Magistrate (Nazool), Nainital
3- Nagar Palika Parishad through its Executive Officer, Ramnagar, District Nainital.
4- Bhopal Singh, S/o Sri Govind Singh, R/o Ranikhet Road, Ramnagar, District Nainital.
5- Additional Commissioner, Kumaun Mandal, Nainital.

--------Respondents

Sri Rakesh Thapliyal learned counsel for the petitioners
Sri B.C. Pandey learned counsel for the respondents.

Dated: April 18, 2006.
HON'BLE RAJESH TANDON, J.

Heard Sri Rakesh Thapliyal, learned counsel for the petitioners and Sri B. C. Pandey, learned counsel for the respondents. All the writ petitions involve common question of law and facts, hence are being disposed of by a common order.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 22-10-2001 passed by the Additional Commissioner, Nainital. Petitioners have further prayed for a writ of mandamus directing the Commissioner/Addl. Commissioner, Nainital to decide the application of the petitioners by a reasoned and speaking order by giving proper opportunities to the all the parties concerned.

Briefly stated, on 16th January, 1929 a lease deed was executed in favour of Arya Samaj, Ramnagar, District Nainital for a period of 30 years which was

renewed for the further period of 30 years in 1963. In the year 1998 a scheme of free hold Nazool land was formulated by Government of U.P., the petitioners applied to the District Magistrate, Nainital by representation dated 29-01-1999 for conversion of the land into Free Hold Land and also deposited certain amount. On 31 May, 2000 Additional District Magistrate Nainital passed an order by which the Nazool land was converted into Free Hold land in favour of the respondent no.4. The petitioners represented before the Commissioner in pursuance of the G.O. dated 17/02/1996. The Commissioner vide his order dated 22/10/2001 rejected the representation of the petitioners on the ground that there is no provision of appeal or representation against the Free Hold granted by the District Magistrate.

A counter affidavit has been filed by the Standing Counsel on behalf of respondent no.1 & 2.

In the counter Affidavit filed by the respondent no.4 it has been mentioned as under:

"that the contents of para No.2 of the writ petition are wrong and misleading and the same are not admitted. The real facts in this connection are that the land leased out to the Arya Samaj is triangular. The land converted into freehold in favour of the respondent no. 4 is outside the area for which lease was granted in faovur of Arya Samaj. The lease deed was executed in favour of Arya Samaj pursuant to the resolution no. 23 dated 24/05/1928 of Notified Area Ramnagar. By the said resolution a piece of land measuring North-South 100 ft. long, being 23 ft. wide on the northern side and Zero ft. wide on the for initially for a period of 30 years. The copy of lease deed filed by the petitioners as annexure 1 itself contains a remarks to this effect"Leased by the Committee in reso:No.24-5-28"

"It is further stated that the aforesaid freehold deed has been registered on 30-6-2000 in Book No.1 Vol. 806 at pages 281-304 at S.N. 2522 and the accompanying map in the Book No.1 Vol 910 at pages 375-376 in the office of sub Registrar Haldwani, District Nainital"

"A registered Freehold deed having been executed in favour of the respondent no. 4 the same is operative. The jurisdiction to cancel or adjudge void a registered instrument vests only in the civil court. The commissioner or Addl. Commissioner has no jurisdiction to grant such relief, in absence whereof the entire proceedings before him will be meaningless."

"There is controversy regarding area and dimensions, of the leased land. The matter involves complicated questions of fact and la. It is therefore in the larger interest of justice that the petition is rejected."

Counsel for the petitioners has invited attention of the court regarding paragraph 7 of the G.O. dated 17-02-1996 which reads as under:

"7- शासनादेश दिनॉक 03.10.1994 मैं फ्री होल्ड की कार्यवाही करने हेतु जिलाधिकारी को रूपये 10 लाख तक एवं मण्डलायुक्त को रूपये 10 लाख से अधिक तथा 50 लाख रूपये तक के मामलों में निर्णय लेने का अधिकार प्रतिनिधानित किया गया था। अब यह निर्णय लिया गया है कि नजूल भूमि के फ्री होल्ड कने की समस्त कार्यवाही जिलाधिकारी स्तर पर की जायेगी। लखनउ एवं देहरादून में यह कार्यवाही उपाध्यक्ष, विकास प्राधिकारण द्वारा की जायेगी। परन्तु जिन मामलों में प्रचलित भू–उपयोग व्यवसायिक है तथा फ्री होल्ड की धनराशि 50 लाख से अधिक है, उन मामलों में फ्री होल्ड की कार्यवाही हेतू मण्डलायुक्त स्तर पर निर्णय लिया जायेगा। उपरोक्त प्राविधान उन मामलों में लागू नही होगा जाहॉ शासन का अनुमोदन आवश्यक है। यहॉ यह भी स्पप्ट किया जाता है कि जिलाधिकारी/उपाध्यक्ष, विकास प्राधिकरण किसी भी दशा में अपने अधिकारी का किसी अन्य अधिकारी को प्रतिनिधायन नहीं करेगे तथा

जिलाधिकारी/उपाध्यक्ष के निर्णय से क्षुब्ध व्यक्ति मण्डलायुक्त या शासन को प्रत्यावेदन दे सकता है।

7. इस सम्बन्ध में मुझे यह भी कहने का निदेश हुआ है कि उपरोक्त संशोधन एवं परिवर्धन को तात्कालिक प्रभाव से लागू कनते हुए कार्यवाही की जाये तथा नीति का विस्तृत प्रचार व प्रसार किया जाये जिससे इसमें निहित प्राविधान सम्बन्धित पक्ष भलि–भॉति समझ सके इसका लाभ उठा सके।

8. इसका आदेश वित्त विभाग के अशासकीय संख्या ई–6–255/दस/96 दिनॉक 14 फरवरी,1996 में प्राप्त उनकी सममति से जारी किये जा रहे है।"

Paragraph 7 of the G.O. direction has been given that in accordance with the G.O. dated 03-10-1994 the D.M is empowered to execute the sale deed in respect of 10 Lacs and above that he Commissioner is empowered to execute the deed of Rs. 50 Lacs and above 50 Lacs by the State Government. It has been made clear that if any question arises regarding free hold it shall be amenable to the representation before the Commissioner.

It is made clear from paragraph 7 G.O. that any question regarding the free hold can be determined by the Commissioner. Such a discretion has been given to the Commissioner before executing the sale deed as a free hold and not afterwards.

It is well settled that under the Registration Act if a deed is registered, no appeal or representation can nullify the execution of the sale deed and the remedy lies with the civil court alone.

In view of the above liberty is given to the petitioners to approach the civil court for their grievances as the remedy lies before the civil court and not by way of representation before the Commissioner, who becomes functus offitio after the execution of sale deed.

In view of the alternative remedy available to the petitioners writ petition is dismissed.

However, it will be open for the Petitioners to approach the Civil Court.

Subject to above, writ petitioners are dismissed on the ground of alternative remedy.

(Rajesh Tandon, J.)

18/04/2006
A.Roy